



NOTES OF THE WEEK

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The Wolfenden Report

The long-awaited Report of the Committee on homosexual offences and prostitution presided over by Sir John Wolfenden, C.B.E., has now been published, and its main recommendations have already been widely—though often superficially—discussed in the press and on the radio and television. Their purport will be to strengthen some sanctions relating to sexual offences against youth and street soliciting by prostitutes, whilst the grip of the law on adult homosexuals is drastically weakened.

Detailed study of the Report soon reveals that a bald summary of its recommendations by no means suffices to bring home their full social and legal significance. These are certainly immense; but they can only be adequately assessed in the light of the reasoning advanced by the Committee for the changes in the law which they favour. The premises upon which the Committee's main arguments depend are unequivocably stated: "Moral conviction or instinctive feeling, however strong, is not a valid basis for overriding the individual's privacy and for bringing within the ambit of the criminal law private sexual behaviour of this kind" (homosexuality). The emphasis on privacy will be noted: it is one of the threads running throughout the Report. And again: "We have avoided the use of the terms 'natural' and 'unnatural' in relation to sexual behaviour, for they depend for their force upon certain explicit theological or philosophical interpretations, and without these interpretations their use imports an approving or a condemnatory note into a discussion where dispassionate thought and statement should not be hindered by adherence to particular preconceptions."

Once such modifications of received moral law are accepted the outcome in terms of specific recommendation can be fairly easily predicted. But we have only to read the vehement minority report of Mr. James Adair, O.B.E., to realize that there are other premises on which the debate could have been founded. It is, for instance, rather surprising to find the privacy of incest—which the law is still to be allowed to regard as of extreme gravity—emphasized in a minority report and not by the Committee as a whole.

In the nation-wide argument which will ensue for many months, in Parliament, legal circles, and, indeed, wherever people meet, it may well transpire that, as regards homosexuality, the claims of public morality are found to be not incompatible with the sanctions of criminal law, and, as regards prostitution that the social ravages of this age-old vice are not dealt with as thoroughly as social well-being demands by merely fining, or attempting to fine, the prostitute off the streets. It is, however, vital that the true significance of this inquest on the law relating to these sexual offences should be brought home to the citizen. Whatever legislation follows the report, its impact is likely to be potent in the formation of moral standards.

For this reason we shall devote two special articles to a full discussion of the report: the first will survey its recommendations in the context of the law as it now stands; the second will assess the report's wider social significance.

Attempted Bribery

A woman driver who had twice failed to pass the test and was alleged to have tried to bribe the examiner with £10, was fined £50 after pleading guilty to the charge. The case was reported in the *News Chronicle* for August 10.

The defending solicitor said the defendant wished to apologize to the examiner for having thus insulted him. That is undoubtedly one aspect of such an offence: it is an insult to an honest man to try to seduce him from his duty and to assume that he can be induced to depart from his standards of conduct by the offer of money. The honest man will treat the offer with contempt, as this examiner did, and will resent the implication.

Like other offences, bribery or attempted bribery varies very much in gravity. At one end of the scale is the case of a person who hardly realizes that it is an offence, thinking it not much harm to try to secure priority or to gain some other advantage by giving a present to some official or employee. At the other end is the case in which there is obvious and intentional corruption perhaps on a large scale. The

consequences of successful bribery may be serious and far-reaching. Probably the lady in the present case had no thought of the fact that if she had succeeded she would have been defeating the law which is designed to protect the public to some extent by insisting that only competent drivers shall be allowed on the roads.

Problems of a Collecting Officer

Mr. Albert Platt, clerk to the justices for Ashton-under-Lyne, does not confine himself to statistics in his annual reports, and usually includes some interesting items of information and some reflections on matters connected with his work.

In his latest report, he says that the great amount of money passing through his office involves problems of its own. He points out that many of the people dealt with have very little idea of ordinary business methods of sending money by post. Although explicit instructions are given it is not unusual to receive an ordinary envelope containing treasury notes without the slightest clue as to where it has come from. Sometimes men who have orders against them give the money to their wives or the women they are living with to post and it is not sent. The men are later surprised to be brought before the court for arrears and very indignant until it becomes clear that the money has not been sent.

Women are no doubt told by clerks to justices that their allowances, if ordered to be paid through the court, should not be paid direct to them, and that if at any time they accept payment they should inform the collecting office at once. Failure to do so inevitably causes confusion.

It is true, as Mr. Platt indicates, that many of the people with whom magistrates' courts have dealings have little idea of accounts and business methods. Many years ago, when the courts had to deal with large numbers of summonses in respect of unpaid income tax a defendant told the court he had paid the account and held the receipt. The collector said he had not received the money and the defendant was asked to produce the receipt. He produced a money order which he had bought but not transmitted to the collector, being under the impression that as he had paid over the money to a Government department he had discharged his debt and had no need to do more.

Detention in Lieu of Imprisonment

So far as we are aware, the power to impose a sentence of detention in ap-

proved cells in lieu of imprisonment for less than five days, under s. 109 of the Magistrates' Courts Act, 1952, is not widely used. This may be due in part to the dislike of the use of the police in connexion with punishment, that being regarded rather as the province of the prison authorities. It may also be due in part to the feeling that these sentences of not more than four days are not likely to serve a very useful purpose.

An unusual instance reported in *The Birmingham Post* concerned the conviction of a man for driving while disqualified and using a car without proper insurance in force. Apparently the court imposed a fine for the second offence, and for the first a fine together with a sentence of four days' detention. A police officer informed the court that the local cells were not certified as suitable by the Secretary of State and could not therefore be used for the purposes of s. 109. Thereupon that part of the sentence was cancelled.

Tax Deductions from "Foreign" Maintenance Orders

We are grateful to the chief clerk of one of the metropolitan magistrates' courts for sending us information about a matter which may well be of interest to other clerks. Payments are being received at his court through a court in Toronto under an order confirmed, or registered, under the Maintenance Orders Facilities for Enforcement Act, 1920, by which a man in Canada is ordered to pay 10 dollars weekly towards the support of his wife and child in this country. The clerk of the court in Toronto has now written to the chief clerk of the metropolitan court concerned to say that he has been forwarding money orders to the amount of 10 dollars weekly under the order but that the Canadian Government has called attention to the fact that 15 per cent. non-resident tax should have been deducted from these payments as they were sent. The result for the woman concerned is somewhat unfortunate because an adjustment has to be made in respect of the payments already sent (the order was made or confirmed in April, 1956), and to allow for that and for the deductions on future payments she will until the end of this year receive only three dollars a week instead of 10. This drastic reduction arises because the arrears of tax have to be made good, but it is to be noted that in any event payments made under court orders by men in Canada to dependents who are not resident in Canada are apparently liable to a 15 per cent. deduction.

Young men who commit violent assaults often present a problem to magistrates, who are naturally reluctant to send them to prison, but feel that milder methods may neither mark the gravity of the offence nor act as a sufficient deterrent to others who may be inclined to act likewise. We think

Absolute Discharge

The expression "absolute discharge" has been criticised as tending to mislead the defendant and the public into the belief that the defendant has not been found guilty.

This impression appeared in a heading in a provincial newspaper stating that a defendant was "cleared" of a charge. It appears that originally the magistrates dismissed the summons, whereupon the prosecution appealed by Case Stated, and the court allowed the appeal, holding that the case had been proved. At the further hearing, the magistrates made an order of absolute discharge.

This means that the defendant was convicted, although neither penalty nor costs were ordered to be paid. He was not, therefore, cleared of the charge in the usual sense of that word.

Litter and Disease

"Keep Britain Tidy" is a popular slogan in the campaign against litter, and no doubt it is the disfigurement of the landscape and the streets, that is the most obvious reasons for the campaign.

That is not all, however, as Mr. A. J. Dennis, chief health officer to Barnstaple rural council, has pointed out. Indeed, he wonders whether it may not be a contributing cause of poliomyelitis.

As reported in *The Western Morning News*, he said, after referring to the changing holiday habits of the people, the increase in the use of tents and the habit of picnic means, and the disregard of people leaving litter and waste organic matter to become a breeding ground for flies and disease, "there is a possible connexion between the rubbish and polio. Decomposing matter and the consequent increase in flies is bound to lead to more illness and infection. This may have a bearing on dysentery and polio." People used to take sandwiches and prepared meals, he said, now they cook at the roadside and leave behind the waste of a meal which is definitely more dangerous from a health angle. He was not saying definitely that this caused polio, but that he wondered if there was a connexion, polio being most prevalent in the summer months.

Punishment of Brutality

Young men who commit violent assaults often present a problem to magistrates, who are naturally reluctant to send them to prison, but feel that milder methods may neither mark the gravity of the offence nor act as a sufficient deterrent to others who may be inclined to act likewise. We think

The Yorkshire Post is justified in raising what it calls a problem of punishment by calling attention to recent cases in which violent assaults have been dealt with by fines, and in asking whether these methods are sufficiently deterrent.

The most recent case referred to in the article, concerned a man aged 21 who pleaded guilty to assaulting a girl aged 16. It was said that he struck her in the face, knocked her over a low wall, and then kicked her in the face. The only provocation he alleged was some remark he said she made, and the girl denied having said anything to offend him. The man was fined £10.

We entirely agree that it is right for magistrates to hesitate before sending people to prison, especially if they are young and have not been to prison before, but we think *The Yorkshire Post* does a public service by raising the question of the best way of dealing with a type of offence that is all too prevalent, attacks by young and strong men upon elderly people or young girls. As it points out, the protection of the public, and of the police who are responsible for maintaining law and order are involved, and we would add that however anxious the magistrates may be to consider the interests of an offender, the protection of the public may have to outweigh such considerations.

Pylons and Power Stations

When the Bill for the Electricity Act, 1957, was before Parliament in May, a variety of objections were taken to the procedure for deciding whether electric power lines should be carried across the country by one route or another. Similar problems arise about the position in which new power stations shall be built. The Minister of Power declared himself in the House of Lords to be as anxious as anybody else to maintain the beauty of the countryside, while pointing out that development of electricity supplies was essential for improving the standard of living in the country, not less than for expanding industry. The debate in the House of Lords attracted more interest in the general press than has been given to the central purpose of the Bill, which was to reorganize the nationalized electricity authorities, and more interest, also, than it might otherwise have done, because it ended in a government defeat by a small majority. This was not fatal to the Bill, and at later stages the Minister was able to produce amendments which were accepted in both Houses. The attack was

indeed confused. There were those who wanted inquiries into the position of new power lines or power stations to be held by persons not on the staff of the Ministry of Power, whose reports would be published. This, as the Minister said, was a matter of policy affecting many government departments (the Report of Sir Oliver Franks' Committee had not then been published); *cp.* our note at p. 508, *ante*, about a suggested inquiry at Manchester. Then there were those who were not satisfied about the circumstances in which a public inquiry should be obligatory; those who disliked all inspectors, inquiries, and authorities who carry out public functions under statute, and those who wanted an order of the Minister to be subject to confirmation by Parliament whenever it overruled an objection. As the Minister pointed out, this last suggestion would enable one single objector to hold up a projected piece of work, and incidentally to put the country to great expense. There was more serious ground for doubt, upon the quantity or quality of objection which should be able to force a local inquiry. It has become a settled principle in recent legislation that objection to the compulsory acquisition of land shall involve either a public inquiry or a personal hearing where an objection by the proposed vendor is maintained, but it would be a substantial extension of this principle if an inquiry was made compulsory at the instance of persons who claim no pecuniary interest in a proposal put forward by some public body.

There was a widespread desire in the House of Lords to grant a special position to the Council for the Preservation of Rural England. The Minister's preference on the other hand was for granting a special statutory position to the local planning authority but to no one else, apart from persons whose pecuniary interests would be affected. Effect is given to this preference by s. 34 (1) of the Act. The planning committee of the County Councils' Association thought that the House of Lords had asked for too much, and eventually a provision was agreed by both Houses, and is now to be found in s. 34 (2), with subsidiary provisions in sch. 2, under which the procedure for advertising applications and lodging objections, and for holding local inquiries, will be governed by regulations of the Minister. The Act does not fetter his discretion in choosing an inspector from inside or outside his own staff. The Minister gave an assurance in the

House of Lords on July 17, that in framing the regulations he would consult the County Councils' Association and also the Council for the Preservation of Rural England. County boroughs are in the same position as counties, and we assume that the Association of Municipal Corporations will be consulted also.

This is satisfactory so far as it goes. It might have been difficult to give a voluntary body a specific standing under Act of Parliament, but there are plenty of instances of undertakings by Ministers to consult such bodies, and we are sure it would be agreed in Whitehall that consultation had been helpful.

We are however, not quite happy about the apparent intention to recognize the County Councils' Association as representing the planning authorities, and not to pay equal regard to the position of local authorities within the administrative county. It could happen that a project accepted by a county council on the advice of its planning officials was strongly resented by local people, speaking through the district council.

This is another of the matters in which we should have liked to see Parliament standing up for the local principle.

Street as Garage

Many car owners who have no garage of their own have taken to the practice of using the street for the purpose, and in many cases they would undoubtedly find it difficult to secure near-by accommodation in a public garage. That is not the only excuse put forward, however, as a case reported in *The Birmingham Post* shows.

A man was summoned for parking his car on the wrong side of a street, and in a letter to the court he said he had run out of petrol and had no money to buy any. According to a police constable however, there was enough to take it to the police station, where it was in fact taken, and what he told one officer was that he wanted a cheap garage. The evidence was that the car was found parked on the wrong side of the street one morning, and was still there nearly 24 hours later, by which time it had become the right side for parking. The police exercised, for the first time in Birmingham, their power to remove a car as an abandoned vehicle.

The street may be a cheap garage if nobody takes exception to its use, but

if a fine results it is not so cheap after all.

We have expressed our views on the use of the street as a garage at pp. 303, 357, and 461, *ante*, and called attention to the power to remove vehicles at p. 477. How such use of the street may be a danger as well as a nuisance, was exemplified by a case in which it was stated that owing to the large number of cars parked in a *cul de sac* it would have been impossible for a fire engine to get to a fire.

Five Days Shall Thou Labour

With a staff of more than 1,000 the county council of Devonshire has been considering whether to adopt a five-day week for office workers. At its meeting in July it is said by *The Western Morning News* to have referred back to the appropriate committee a recommendation in this sense. The councillor who led the opposition considered that closing the county offices on Saturday would be setting a bad example to other employers in the county. Even though the number of hours worked in the week remained the same, there were (he said) many ratepayers who had to work much longer in order, amongst other things, to pay the county rate. Indeed he went so far as to say that in the present position of the country people generally ought to be working 40 to 44 hours a week.

It is a point of view, but one which for good or evil seems to have lost favour with industrial employers, as well as with industrial workers, and (in consequence or in sympathy) to have been rejected also in most non-industrial employments, at any rate those carried on in big establishments. There is something ironical in the Government's endeavours to increase production, with a conference on the subject of inflation for which the Chancellor of the Exchequer came back from a holiday abroad, when the Government itself has within the last 12 months set the seal upon the five-day week for office workers by adopting it throughout the Civil Service. This went beyond what was recommended by the latest Royal Commission, but the Government felt that they could not compete for clerical and other subordinate staff with commercial employers who were already offering free Saturdays, unless they did the same. In factories, it can easily be understood that it is not worth while to start machinery for half a day—where Saturdays are worked, this is likely to be as part of a shift system, which may include Sunday work and night work. Whether on a long view the same considerations

apply to office work is probably more arguable. It certainly is an open question whether all the people who escape working on a Saturday find any satisfying occupation for the added leisure, but the free Saturday seems to have come to stay, and local authorities will not be able to resist it.

Fluoridation of Water Supplies

We have drawn attention previously to the experimental operation in a few areas in this country of fluoridation of public water supplies as was recommended by the United Kingdom Mission which was sent by the Ministry of Health to the United States. Fluoridation is now in operation to a considerable extent in the United States and it is interesting to know (we quote from a New Zealand press bulletin) that the subject has been considered by a Royal Commission in New Zealand. The Commission believed that a decision to fluoridate public water supplies should be made by the communities concerned. In some such matters in New Zealand the procedure for obtaining local approval is by a referendum or local poll but the Commission considered that this way was an unsatisfactory method of reaching a decision on such a technical and complex matter. In Great Britain this is also a matter for the decision of the local authority concerned but it has been found impossible in several instances to take such action in view of strong local criticism, misguided we believe, arising from the fear that the treatment of water in this way would be generally injurious to health.

In New Zealand, however, there will be every opportunity of the local inhabitants making their views known before any final decision is reached by the local authority. A special order procedure is prescribed by the Municipal Corporations Act, 1954, before a local authority can take action in certain special matters, and if the report of the Commission is approved this will apply to any proposal to fluoridate the local public water supplies. This involves a special meeting of the local authority, public notice of the resolution and a subsequent meeting of confirmation. The Royal Commission also recommended the establishment of a national body to advise and assist local authorities on the installation and maintenance of fluoridation plants.

The report states that virtually every child born in New Zealand suffers from dental decay and an unduly high proportion of the population over the age of 21 use some form of denture. In areas where there is fluoride in drinking

waters at optimum concentrations, the prevalence of dental decay in children is at least 50 per cent. lower than in areas where the fluoride content was 0.2 pp or less. On the question of personal rights, the report stated that the avoidance of fluoridated water might cause inconvenience but in no instance would its use be compulsory.

Rate Contributions for Crown Properties

For a long time the local authorities have been pressing for an improved basis for the payment of contributions from rates in respect of Crown properties. The matter was considered recently at a conference of representatives of the various associations of local authorities at which it was decided to press for the transfer of the responsibility for valuation from the Treasury to the Inland Revenue. The whole subject was dealt with exhaustively in a very useful memorandum by a working party of officers appointed by the associations in which it was pointed out that the principle that the Crown is not liable for rates was established in the case of *Jones v. Docks* in 1865. Nevertheless the Treasury has paid contributions in lieu of rates under Minutes of 1874 and 1896. Certain anomalies arising from existing arrangements were mentioned in a House of Commons debate on February 1, 1955, when the then Financial Secretary to the Treasury, who is now the Minister of Housing and Local Government, expressed a desire to make sure not only that justice was done but that it was seen to be done by all concerned. This undertaking related to two specific matters—Crown properties on requisitioned land and deductions from contributions in respect of services provided by the Crown and not by the local authority. Nevertheless the associations think it appropriate now to raise the question of certain other anomalies which, although not involving a large sum in total, are important to the authorities concerned. In some cases the Treasury has refused to pay a contribution in lieu of rates merely because the tenure of the site was that of requisition. On deductions for services provided by the occupying department a new practice has been adopted which is acceptable to the local authorities. One matter to which objection is raised is the refusal to pay contributions in respect of premises occupied by the Territorial Army; another is the privileged position of telephone and telegraph properties as compared with other public utilities.

ERROR OF JUDGMENT, OR MOMENTARY CARELESSNESS, AND DANGEROUS, OR CARELESS, DRIVING

The relevant words of s. 11 (1) of the Road Traffic Act, 1930, creating the offence of reckless or dangerous driving are: "If any person drives a motor vehicle on a road recklessly or [at a speed or] in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition, and the use of the road, and the amount of traffic which is actually at the time, or which might reasonably be expected to be, on the road, he shall be liable . . ." Similarly, the relevant words of s. 8 (1) of the Road Traffic Act, 1956, which creates the offence of causing death by reckless or dangerous driving of motor vehicles are: "Any person who causes the death of another person by the driving of a motor vehicle on a road . . .," and then the above identical words in s. 11 of the Act of 1930 are repeated. The words of s. 12 (1) of the Act of 1930 creating the offence of careless driving are: "If any person drives a motor vehicle on a road without due care and attention or without reasonable consideration for other persons using the road he shall be guilty of an offence." This article is concerned with the defence of error of judgment, or of momentary carelessness, which it may be sought to set up in answer to a charge of reckless or dangerous driving or of causing death by reckless or dangerous driving, or of careless driving. For this reason the above words in square brackets relating to the offence of driving at a speed which is dangerous, or of causing death by driving at a speed which is dangerous, in ss. 11 (1) and 8 (1) have been omitted since it is clear that there is no room for the operation of an error of judgment, or of momentary carelessness, where the dangerous driving arises by reason of the speed at which the motor vehicle is being driven. It is only therefore in answer to the charge of driving recklessly or in a manner which is dangerous, or of causing death by driving recklessly or in a manner which is dangerous, or of careless driving, that the defence of error of judgment, or of momentary carelessness, can be set up.

Whether or not the manner in which a motor vehicle is being driven on a particular occasion is dangerous to the public is a question of fact for the justices depending, as ss. 11 (1) and 8 (1) state, upon all the circumstances of the case, including the specific matters set out therein. Although, of course, this is a question of fact, a particular finding by justices, for example, that the specific kind of driving which it had been alleged was dangerous was not so in fact, may be set aside on appeal if this conclusion of fact to which the justices had come was one which no reasonable person could have drawn from the facts. As it was put by Denning, J., as he then was, in *Bracegirdle v. Oxley* (1947) 111 J.P. 131, where the finding by justices, that the driving on a particular occasion at a certain speed was not dangerous to the public contrary s. 11 (1), was set aside. There in drawing a distinction between primary facts, that is to say, facts which are observed by the witnesses and proved by testimony, and conclusions from those facts, which are inferences deduced by a process of reasoning from them, he says: "In a case under the Road Traffic Act, 1930, s. 11, the question whether a speed is dangerous is a question of degree and a conclusion on a question of degree is a conclusion of fact. The court will only interfere if the conclusion cannot reasonably be drawn from the primary facts, and that is the case here. The

conclusion drawn by these justices from the primary facts was not one that could reasonably be drawn from them." (See also as to speed being dangerous, *Baker v. Williams* (1956) 120 J.P.N. 96; *The Times*, January 28). Similarly, in *Marson v. Thompson* (1955) 119 J.P.N. 172; *The Times*, March 8, where the justices had dismissed an information under this section for driving in a manner which was dangerous, the finding was set aside, Lord Goddard, C.J., stating that it was a clear and obvious case of cutting in, and that the Court would follow *Bracegirdle v. Oxley* in which it was laid down that the Divisional Court would review cases of dangerous driving where the finding was perverse—that was, where the evidence pointed all one way and the justices decided the other way.

The question may then be asked: What is meant by driving in a manner which is dangerous to the public? to which no hard and fast answer can be given. Thus, in *R. v. Parker* (1957) *The Times*, May 7, in his judgment dismissing an appeal against a conviction of causing death by the driving of a motor vehicle in a manner which was dangerous to the public contrary to s. 8 (1) of the Act of 1956, Lord Goddard, C.J., in answer to the argument of counsel for the appellant that the Court should not convict the appellant of dangerous driving when he was only guilty of momentary carelessness, stated that the Court was certainly not going to attempt to lay down what dangerous driving was. It was a matter of fact for the jury. There the ground of appeal was misdirection, the misdirection which was complained of being that Streatfeild, J., had said that momentary inattention could amount to dangerous driving. The Lord Chief Justice also stated that it was a question of degree: Were there circumstances on which the jury could find the appellant was driving dangerously? As regards the defence on the facts, it appears that during a busy time of day the appellant was driving along a road when he came to a dangerous crossing, when he crossed over against the lights when they were showing red in his direction, and came into collision with a motor bus, with the result that the rear end of his car was flung round and struck an old man who was killed thereby. The appellant said that the lights were green, then, when he was told that they were not, he said that he must have been mistaken. The question for the jury was whether the death was caused by dangerous driving, and the jury said that it was.

In view of the Court's refusal to condemn as a misdirection the ruling of Streatfeild, J., that momentary inattention could amount to dangerous driving, a reference to the corresponding position where the cause of dangerous driving, or carelessness, is alleged to be an error of judgment on the part of the driver may be of value in order to see the proper relationship in law between the danger or the lack of care, and the error of judgment as laid down in certain cases. Thus, in *R. v. Howell* (1938) 103 J.P. 9, where the appellant was charged with manslaughter arising out of the driving of a motor vehicle (on which charge he was found not guilty) the possibility of a conviction of dangerous driving by virtue of the Road Traffic Act, 1934, s. 34, was considered. Lawrence, J., there directed the jury that "If you think that [the appellant] was guilty of a mere error of judgment, then you should find him not guilty." The foreman of the jury then, in answer to the

question whether they found him guilty or not guilty of dangerous driving, replied: "Yes, we find him guilty of dangerous driving owing to an error of judgment." The learned Judge then said: "you have heard the direction that I gave you. The question is whether you find him guilty or not guilty of dangerous driving." To which the foreman replied: "guilty of dangerous driving." In quashing this conviction it was held by the Court of Criminal Appeal that, upon the finding by the jury that the appellant had been guilty of only an error of judgment, he was entitled to be acquitted. Lord Hewart, C.J., after pointing out that it would seem hypocritical to read the words "owing to an error of judgment" as differing in the circumstances from "owing to a mere error of judgment," stated that, in other words, the jury meant to say: "We know, when we look at the consequences and see the results of the event, that the driving was in fact dangerous, but so far as the driver is concerned, we impute to him no more than a mere error of judgment."

This decision, however, has since been explained in *Simpson v. Pear* (1952) 116 J.P. 151, where the Divisional Court expressed the view that it would be better if reference to this case were omitted from the books, not because the Court dissented from the decision, but because the case had laid down no principle of law and should not be regarded as doing so. There a driver was charged with driving a motor car without due care and attention contrary to s. 12 (1) of the Act of 1930, and the justices, being of opinion that he had committed an error of judgment, and basing themselves upon *R. v. Howell*, held that he could not in law be guilty of the offence charged, and they dismissed the information. In allowing an appeal by the prosecutor and remitting the case to the justices with a direction to convict, Lord Goddard, C.J., referring to this case stated that from the discussion which had taken place between the foreman and the learned Judge (which has been set out above) the Court of Criminal Appeal thought that what the jury meant by using the expression "mere error of judgment" was that, though a dangerous situation had, in fact, arisen, they were not prepared to hold that this was due to dangerous driving by the appellant, and, accordingly, they quashed the conviction. It was by no means impossible, and indeed, it must on occasions happen, that a situation of danger arises in which a motorist is involved, but it could not be said that he caused it by driving dangerously. That is what the Court thought the jury meant. They were certainly not laying down that an error of judgment could not amount to carelessness. He then went on to consider the meaning of the words "error of judgment," saying: "The expression 'error of judgment' is not a term of art. It is, in fact, one of the vaguest possible description. It can, colloquially, be used to describe either a negligent act or one which, though mistaken, is not negligent. When one is considering s. 12, the marginal note of which is 'careless driving,' it is, in our opinion, clear that a driver may not be using due care and attention although his lack of care may be due to something which could be described as an error of judgment. If he is driving without due care and attention, it is immaterial what caused him to do so. The question for the justices is: Was the defendant exercising that degree of care and attention that a reasonable and prudent driver would exercise in the circumstances? If he was not, they should convict. If, on the other hand, the circumstances show that his conduct was not inconsistent with that of a reasonably prudent driver, the case has not been proved. The justices here thought that Howell's case obliged them as a matter of law to dismiss the summons, but the question whether a man is driving carelessly, to use a com-

pendious expression, raises only a question of fact." Then, after stating that it was in the opinion of the Court undesirable to complicate such cases, which raised only simple questions of fact, by such loose and vague expressions as "error of judgment," he continues: "Whether the charge is under s. 11 (1) or s. 12 (1), the offence can be committed although no accident takes place. Equally, because an accident does occur it does not follow that a particular person has driven either dangerously or without due care and attention. But if he has, it matters not why he did so." He then instanced the case of a driver who, being confronted with a sudden emergency through no fault of his own, in an endeavour to avert a collision swerved to his right, while it was shown that, had he swerved to his left, the accident would not have happened. But that, he pointed out, was being wise after the event, and, if the driver was, in fact, exercising the degree of care and attention which a reasonably prudent driver would exercise, he ought not to be convicted, even though another, and perhaps, more highly skilled driver would have acted differently. Again, it should be noted that in *Kay v. Butterworth* (1945) 110 J.P. 75, the Court of Criminal Appeal held that on the facts a driver was guilty of dangerous driving where he drove his motor car into the rear of a party of soldiers who were marching in a column in the same direction, some of whom were injured, rejecting the respondent's contention that, as he was overcome by sleep or drowsiness, he was not conscious of, or responsible for, his actions. Humphreys, J., in his judgment, stated that, if a driver allows himself to be overcome by sleep while driving, he is guilty, at least, of the offence of driving without due care and attention under s. 12 (1), because it is his business to keep awake, and that if drowsiness overtakes him while driving, he should stop and wait until he becomes fully awake. The above opening remarks in this judgment foreshadowed those of Lord Goddard in *Henderson v. Jones* (1955) 119 J.P. 304, in the case of a driver of a motor car which veered across the road and collided with another motor car approaching her on its correct side of the road. The driver contended that, as she was asleep, she was not in control of her actions and was not driving, but the Lord Chief Justice stated that she was, at the least, driving without due care and attention, and, he should have thought, might have been held to be driving dangerously. In remitting the case to the justices who had dismissed an information under s. 12 (1), he said of her: "Being asleep might account for what she did, but it was no excuse if she goes to sleep when she is driving." In so deciding he distinguished the earlier case of *Edwards v. Clarke* (1950) (unreported, but referred to at 115 J.P.N. 426) which he stated depended upon its own very special facts, and did not conflict with *Kay v. Butterworth*. There the police had found the driver of a motor car walking along a road, and further back on the road they found his motor car stationary with its bonnet in a hedge on the near side of the road, and when they asked him why it was at the side of the road, he replied, "I was asleep." It was held, upholding the refusal of the justices to convict the driver, that there was no evidence of anybody driving the motor car carelessly. It is interesting, however, to observe that Humphreys, J., in the above case was careful to say that he did not apply his censure to every driver who was rendered unconscious while driving, but that he made an exception in the case of a sudden illness or the like. Thus, he says: "I do not mean to say that a person should be made liable at criminal law who, through no fault of his own, becomes unconscious while driving, as, for example, a person who has been struck by a stone or overcome by a sudden illness, or when the car has been put temporarily out

of control owing to his being attacked by a swarm of bees or wasps."

Finally, with reference to Lord Goddard's remarks in *Simpson v. Peat* in connexion with a driver, who is charged with driving without due care and attention, exercising that degree of care and attention that a reasonable and prudent driver would exercise in the circumstances, the observations of Lord Hewart, C.J., in *McCrone v. Riding* (1938) 102 J.P. 109 should not be forgotten. There, in laying it down that a learner driver is in no different position from any other driver with respect to the care and attention required by s. 12 (1), he points out that the standard of care required is an

objective standard, an impersonal and universal standard, a standard fixed in relation to the safety of other users of the highway, and not at all related to the degree of proficiency or degree of experience attained by the individual driver. As regards the meaning of the words in the section, he says: "I think it is not without significance that the statute uses both the word "care" and the word "attention." In other words the driver, whoever he may be, experienced or inexperienced, must see what he is about. He must pay attention to the thing he is doing, and, perceiving that which he is doing or entering upon, he must do his best, and he must show proper care in the doing of that thing which he is intent on."

M.H.L.

APPLICATIONS ARE INVITED FROM SOLICITORS . . . A PERSONAL APPROACH TO THE LAWYER-CLERK CONTROVERSY

[CONTRIBUTED]

So much has been written over the past several years, on the question whether a local authority clerk should or should not be a lawyer, that there may seem to be nothing new worth contributing to the controversy.

Those who seek to challenge traditional practice are always at a disadvantage, for custom in this country has a sanctity near immutable. And there can be no denying that the office of clerkship has become, by most respectable means, a closed shop for solicitors.

A short account of the impact upon one personally of this conventional practice of local authorities might, however, throw some light upon the matter from a different angle. And it may help to emphasize the purely personal nature of the views now to be expressed, for the writer to depart from the habit of these pages and use the first person singular.

Recently, then, I had the opportunity—in circumstances more favourable than ever before—of being articled to a local authority's lawyer-clerk. I did not, in fact, take advantage of the opportunity for a number of reasons; I must be scrupulously honest and say that the decision was dictated no less by material considerations than by conscientious objection on principle. For let it be understood at the outset that it is my unalterable view that local government is not well served by the exclusion from the top administrative posts in the service of able administrators, who are not and have no desire to become members of the Law Society.

This, in simple terms, is the peculiar situation in which recently I found myself. I had behind me, excluding the war period, some 20 years' experience of local government in an administrative capacity with local authorities of nearly every type: an urban district council, a borough, and a county council; and I had even ventured for a while within the metropolis. I possessed all the professional qualifications that might fairly be termed administrative—except the new D.M.A. I lectured and wrote on local government over a broad field, and I had seen something of local government abroad. It was no exaggeration for me to say, I felt, that local government was in my veins. I believed I had a capacity for administration. Not a capacity acquired through qualifications and experience alone, though both must have contributed something, but one thrust upon me—no credit to me!—in the capricious manner in which nature sees fit to bestow her gifts.

I had not failed in my local government career but then neither had I been remarkably successful. Measured against the average I had done well. I was in a relatively senior position and my salary was calculated in four figures. But I lacked the status accorded to the solicitor in local government, and I knew that whatever abilities I possessed as an administrator would never be fully recognized unless I entered the learned profession of the law. This just didn't make sense, but it was an inescapable fact.

I now had the opportunity of becoming a solicitor. What did this really mean?

It meant simply that I had to accept the unpalatable truth that my own professional, very relevant, qualifications were useless. I had to put on one side for three or five years all that I knew and almost loved about local government in order to become a general practitioner in the law. I had to shut myself from the imaginative, dynamic liveliness surrounding the committee cycle, to learn a lot that would never concern me. Just two subjects—that of local government law and the hotchpotch of planning, compulsory purchase, and valuation—were of undeniable worth, and these two I had already studied and mastered sufficiently for administrative purposes in examinations of another kind.

I was to learn nothing which might better equip me for the role of town clerk or clerk of the council. My aptitude for good management was not to be tested. The principles of administration, establishment work, organization and methods techniques, accountancy: none of these concerned the lawyer in his professional training.

But, it might be said (as indeed it was said to me), you would emerge much better equipped over all. If you are as good as you say you are, then with these rare qualities and the addition of a legal qualification you would surely be a formidable applicant for any clerkship . . .

How specious! The fact is that I would emerge as a newly admitted solicitor and considered junior to the fledgling of 20 summers or so. The simple truth of it all is that local authorities are looking for lawyers, not for administrators, to fill the post of principal administrator and executive officer.

I could not bring myself to indulge in such subterfuge to fulfil my ambitions.

Am I martyr or bigot? Is there a lesson here for local government? Or is all that I have said the mere petty

grievance of one who has failed to find his place in the scheme of things?

One thing at least is surely not arguable. Local authorities can never be sure of getting the most able administrators at

the top until there appears no more in the advertisement pages of this and contemporary journals the opening—and damning—phrase: "Applications are invited from solicitors . . ."

POOR RELIEF TO NATIONAL ASSISTANCE AN HISTORICAL OUTLINE OF THE ENGLISH POOR LAW

By L. NEVILLE BROWN AND G. C. F. FORSTER

(Concluded from p. 579, ante)

FIFTH PERIOD: 1939 TO THE PRESENT DAY

The Beveridge Report

During the war of 1939-1945, unemployment disappeared almost completely. There arose a widespread determination that it must not return after the war. In 1942 an official report was published on national insurance and the social services, in which Sir William Beveridge (as he then was), who had been associated with the insurance schemes for many decades, outlined a plan to abolish want by even more comprehensive insurance and even greater social services. As a first instalment of the plan, the interim Conservative Government introduced, in 1945, a family allowance by way of a weekly money payment for every child under 15 years of age, other than the first child, payable to the parents irrespective of their means.

The Labour Government, elected in 1945, proceeded to implement the plan. Four major statutes were passed to this end. First, a national health scheme was introduced by the National Health Service Act, 1946. This service provided out of taxation medical treatment, including necessary medicines and hospitalization, to all, rich and poor alike, without further charge. Secondly, the National Insurance Act, 1946, introduced compulsory insurance for everyone over 16. The insurance covered all the normal vicissitudes of life—old age, sickness, maternity, widowhood and unemployment. Accident or disease arising out of one's employment was the subject of a third statute, the National Insurance (Industrial Injuries) Act, 1946: this Act repealed and replaced the Workmen's Compensation Acts, under which, since 1897, the individual employer had been made liable to compensate his workmen for accidents while at work—a liability against which the prudent employer usually protected himself by insurance. The administration of both these Insurance Acts of 1946 was entrusted to a new Ministry of National Insurance. Finally, the whole plan was completed by the National Assistance Act, 1948.

The National Assistance Act, 1948

This Act achieved the final destruction of the poor law, for s. 1 states: "The existing poor law shall cease to have effect and shall be replaced by the provisions of this Act as to the rendering, out of moneys provided by Parliament, of assistance to persons in need."

After 1948, poor law and public assistance are replaced by "national assistance" administered by the National Assistance Board and financed from national taxation instead of local rates. The county councils and county borough councils no longer are the principal authorities for relieving the poor but have a very subordinate role, their duties being only three. In the first place, they have the duty to provide residential accommodation in their areas for those homeless, aged or infirm persons who need care and attention not otherwise available to them; secondly, they must maintain

certain facilities for the instruction and employment of persons who are physically handicapped, especially the blind; and thirdly, they must bury persons dying within their areas where no other arrangements for burial are being made.

The principal change is this removal from the county councils and county borough councils of assistance to the poor, other than in these three limited ways. The National Assistance Board now has charge of the administration of all money payments to the needy. The Board replaces the Unemployment Assistance Board, set up in 1934 and renamed the Assistance Board in 1940 when it was given the added function of paying supplementary allowances to needy pensioners. Like its predecessors the new Board occupies an anomalous constitutional position. It is not a ministry or government department, but a Minister (the Minister of Pensions and National Insurance) is answerable to Parliament for its general policy. The Board consists of six members, with a headquarters in London, but acts through its local officers and local advisory committees. By these arrangements it is hoped to render national assistance reasonably immune from political pressures.

The Scope of National Assistance.

The national assistance which the Board administers has now to be regarded as a kind of net which is spread below the other social services to prevent any person sinking below a certain minimum level of subsistence. National assistance has become the residual social service to stop up such gaps as are left by the other specialized services.

That such gaps still remain is evident from the very considerable number of persons who are still dependent upon national assistance. From the latest report of the National Assistance Board for the year ended December 31, 1956 (Cmnd. 181, published by H.M.S.O. in June, 1957), it appears that no less than two and a quarter million persons were benefiting from weekly assistance allowances. An analysis of the composition of this huge number will reveal how important a part the Board is playing in upholding the principle of the welfare state.

(a) Dependent Wives and Children

The persons in receipt of relief fall into certain main categories. In the first place, the two and a quarter millions include the dependent wives and children under 16 years of age of the men to whom the assistance allowance is actually paid. These dependent wives and children number some 640,000. This leaves approximately 1,656,000 persons actually drawing assistance, both for their own needs and for the needs of their dependants.

(b) The Old and the Sick

Of this 1,656,000, the biggest group, amounting to 87 per cent. of the whole, comprise the old and the sick. By the

old are meant persons who have reached the age at which a "retirement pension" (as the contributory old age pension is now called) is normally payable, *i.e.*, 65 for a man, 60 for a woman. Although this pension was intended to provide adequate maintenance, inflation has driven many pensioners to supplement their pensions by national assistance. Also, many persons above these ages are not entitled, for various reasons, to a retirement pension, and so are wholly dependent on national assistance unless or until they become entitled to a non-contributory old age pension—and this in turn may need to be supplemented by assistance. Altogether, 72 per cent., or 1,186,000 out of 1,656,000, were old in this sense. Of the old only a small minority are cared for in the homes provided by local authorities; the great majority continue to live in their own homes or with relatives while in receipt of their pension and supplementary assistance.

A further 15 per cent. (249,000) is formed by the sick, that is, persons temporarily or permanently incapacitated from work by sickness (including industrial injuries) or by disabilities (including blindness). In 1956 about half of the sick were receiving assistance to supplement insurance benefits under the National Insurance Acts; the other half were wholly dependent on national assistance.

(c) Widows, Husbandless Wives and Unmarried Mothers

The next largest group of assisted persons consists of women who do not fall into the category of the old or sick but who have no husband to support them, either because the husband is dead or because he has deserted his wife or separated from her. It is true that the absentee husband remains legally liable to support his wife and children and that the Board may bring legal proceedings against him to recover the cost of assistance given to his dependants, but often the husband will have vanished without trace. There are some 41,000 "husbandless wives" having to be assisted because they are unable to support themselves by employment owing to their domestic responsibilities, especially the upbringing of young children. To these must be added 15,000 unmarried mothers with young illegitimate children (numbering 22,000) in receipt of assistance for the same reason. Seventy thousand widows receive assistance to supplement their widow's pension, and there are 17,000 other women having to stay at home to look after old or sick relatives. In all, therefore, this group numbers 143,000 women and accounts for almost nine per cent. of the total of 1,656,000 persons drawing national assistance.

(d) The Unemployed

The four per cent. still unaccounted for is made up largely of what, under the earlier law, would have been called the "able-bodied poor," since it consists of those between the ages of 16 and 65 (or 60 in the case of a woman) who are unemployed although physically capable of work. In December 1956, 72,000 unemployed persons (mostly men) were in receipt of a weekly assistance allowance either to supplement their unemployment benefit under the National Insurance Acts or because they were not, or had ceased to be, qualified to receive unemployment benefit, and so were wholly dependent on national assistance for their support.

Much of this unemployment was doubtless more apparent than real, being due to workers changing from one job to another: between jobs unemployment benefit would be received but this might need to be supplemented by national assistance. Moreover, many of the 72,000, although legally classified as able-bodied, in fact suffer from varying degrees

of physical or mental disability, so as to make them virtually unemployable.

Yet, within the genuinely unemployed, there exists a hard core of the idle and work-shy. This small group of idlers represents a problem out of all proportion to the numbers involved, perhaps not more than one half per cent. of the total of persons receiving assistance. The Act of 1948 makes it a crime for a person persistently to neglect to maintain himself and his family (s. 51): where a man persistently refuses to take suitable work which is offered him, the Board may prosecute him under the Act, and his conviction may result in a sentence of imprisonment. The other expedient which the Board employs against the idler is to refuse him any financial assistance, but to offer him accommodation in a "Re-establishment Centre" where he will be engaged in regular work in healthy surroundings for a period of some months. It is hoped by this means to induce him to take up normal regular employment when he leaves the centre. The Board reports considerable success with this scheme. But some abuse is inherent in the system of national assistance, and it is doubtful whether a complete answer will ever be found to this problem of the work-shy.

From the above analysis of the persons receiving assistance in 1956 it will be apparent that the National Assistance Board still has a vital function to perform, notwithstanding a comprehensive scheme of national insurance. Indeed, more than two-thirds of the assisted persons were also receiving national insurance benefits.

CONCLUSION

The principle which links together all the five periods discussed in this series of articles is the assumption by the State of public responsibility for the relief of the poor. Since the time of Elizabeth I no government has ever departed from that principle.

After the severities of the eighteenth century, the nineteenth century witnessed a steady refinement in the methods of relief and the gradual removal of the various categories of the impotent poor from the general mixed workhouse.

In the present century, attention was directed more to the prevention of poverty by attacking its root causes, principally old age, sickness, and unemployment. Two methods have been adopted. First, the State has provided out of taxation various social services in which all citizens may participate without payment. Secondly, the State has compelled all citizens to take part in national insurance from which they benefit on the happening of certain contingencies. This insurance principle was introduced in 1911, extended after 1918, and finally made applicable by the Acts of 1946 to every member of the community. The two methods now operate together and are complementary one to the other.

Today, this active intervention of the State in the alleviation and prevention of poverty has become only one of the many ways in which the State exercises a wide measure of control over the economic life of the nation. But despite this increasing role of the State there remains a place for the voluntary effort of the individual: self-imposed thrift, private insurance, assistance within the unit of the family or the wider circle of the friendly society or similar body, pension-schemes in industry, and charitable activity of every kind.

BOOKS AND PAPERS RECEIVED

Institute of Social Welfare. Quarterly bulletin. Summer 1957. Volume 1, No. 7. Hon. Secretary, Mr. A. J. B. Middleton, County Hall, Lewes, Sussex.

ROYAL COMMISSION ON THE LAW RELATING TO MENTAL ILLNESS AND MENTAL DEFICIENCY—II.

At p. 426, *ante*, attention was drawn to some of the recommendations of the Royal Commission as affecting local government, hospital administration and the powers of magistrates and the courts. There are other aspects of this important report which are worthy of special attention in the light of a debate in the House of Commons before the Summer Recess.

The Government was asked in the debate whether the findings of the Commission would be embodied in legislation. The Home Secretary (Mr. R. A. Butler) speaking as Leader of the House, pointed out, in reply, that the Commission had stated that many of their recommendations for the development of community health and welfare services can be undertaken under local authorities' existing powers without new legislation, but there are some points on which amendment or clarification of the present law would be needed. Mr. Butler insisted that before introducing new legislation there must be consultation with the local authorities. The Ministry of Health have, therefore, asked the local authorities and hospital bodies for their views on the report by the end of September so that the recommendations may be discussed with them before an announcement is made as to the action which the Government propose to take.

It was explained in the House of Commons by the Parliamentary Secretary to the Ministry of Health (Mr. J. K. Vaughan-Morgan) that the general principles underlying the report are in accord with the recent trends in the mental health service. It is now held that mental and mental deficiency services should be brought into line whenever possible with general health services. The value of day hospitals was stressed in the debate. One member, speaking from his experience as a medical officer of one of these day hospitals, felt strongly that they can be extremely useful for many types of patients. Like other hospitals, day hospitals have an out-patient department but they have no beds for night-time. The patients live at home or in lodgings or hostels and go daily to the hospital for their treatment. The Minister of Health has stated that there are now 15 day hospitals in the country. It was suggested in the debate that the number should be extended considerably as a means of providing for more patients by a better, and cheaper method, than admission to hospital. Another new and promising development which the Parliamentary Secretary mentioned is the arrangement which may be made to take a mental defective into hospital temporarily to help the family over a crisis. But he said there is more to be done on these lines. He agreed, however, that there had not been similar developments in the services of the local authorities for the mentally ill.

TRAINING CENTRES FOR MENTAL DEFECTIVES

One of the matters to which special consideration was given in the report was the provision of training centres for mental defectives. Some witnesses suggested that occupation or training centres for children should be under the administration of the local education authorities rather than the local health authorities on the grounds that this would reduce the distress at present caused to parents by the reporting of their children as ineducable. But it was generally agreed that great care is taken not to exclude from school any child who is thought likely to benefit at all from formal education, and that the training of the severely disabled children who

are at present excluded is really a matter for special staff working under general medical oversight and cannot be considered as education in any normal sense of the word. In the view of the Commission the most serious criticism of the present arrangements, apart from the need for more centres, is that the procedure by which these children are excluded from school causes unnecessary distress to parents. The Commission did not think, however, that the proper answer to these criticisms was to recommend the transfer of administrative responsibility for the centres from the local health authorities to the local education authorities. It was thought to be more important to revise the procedures and the terminology so that the approach was more positive and less negative. It was agreed that the main responsibility for providing training centres for the severely sub-normal children at present classified as idiots and imbeciles should continue to be regarded as a health rather than an educational service. It was stated in the House of Commons that the number of centres had increased from 100 in 1948 to 312 at the present time. In 1948 the number receiving training was 4,000. Now the number under training is 15,500. But over 8,000 reported suitable for training are not yet receiving it.

LOCAL AUTHORITY RESPONSIBILITY

Local authorities have a general responsibility under s. 28 of the National Health Service Act, 1946, for providing care and after-care for mental patients living in the community, and since 1948 some authorities have appointed staff in their mental health departments to undertake social work for patients who have not been referred to hospital for treatment or are attending only as out-patients or who have been discharged from hospital. In some areas the local authority staff and the hospital staff co-operate very closely and have worked out arrangements by which they pool their resources or divide their activities on agreed lines. Elsewhere they work in isolation from each other. In some areas almost all the social work which is done is undertaken by the hospitals for their own patients and discharged patients; in others very little social work is undertaken specifically for the mentally ill, apart from the work of arranging the admission to hospital of certified patients which all local authorities undertake. Clearly more might be done by local health authorities in arranging for home visiting by welfare officers, either as part of after-care or to deal with the early signs of mental disturbance. Mr. Vaughan-Morgan told the House that much more remains still to do in this field of domiciliary work. For this no new legislation is required.

MISCELLANEOUS RECOMMENDATIONS

Part VII of the report refers to various parts of the law to which the attention of the Commission was drawn, which deal with subjects which were not themselves within their terms of reference but which need consideration if the recommendations made in the other parts of the report are accepted. For instance, in some respects the civil rights and liabilities of persons suffering from mental disorder differ from those of other citizens. In so far as these are governed by the principles of common law, they depend broadly on whether the patient is capable of appreciating the nature and effect of the act in question, e.g., the signing of a document. In so far as the civil liabilities or disabilities of mentally disordered persons are governed by statute law, they are deter-

mined by the words of the statutes and the interpretation placed on them by the courts. Some such statutes adopt terminology or classifications derived from the present Lunacy and Mental Treatment or Mental Deficiency Acts. If the recommendations of the Commission for new terminology and procedures are adopted, it will be necessary to amend the wording of many statutes which at present depend on the classifications contained in these Acts.

The Commission gave special attention to the present procedure for the appointment of a receiver to act for a person who is unable to manage his own affairs. Under the present law such a person need not necessarily be of unsound mind. In practice the Court of Protection require specific medical evidence of incapacity in all cases when an application for the appointment of a receiver is being considered. But once

it has been decided that a receiver is to be appointed the receivership arrangements are not affected by a patient's change of "status" or discharge from or entry into hospital; the question of his capacity to manage his own affairs is thereafter dealt with quite separately from the question whether he needs treatment in hospital or not. The Commission did not think that it should be assumed in law or in administrative practice that mentally disordered patients who are admitted to hospital under compulsory powers are necessarily incapable of managing their financial affairs. It was recommended that the Minister of Health should ask hospital and local authorities for detailed information about the extent of this problem generally and should then discuss with them and with the Court of Protection, in consultation with the Lord Chancellor, what new arrangements would be suitable and practicable.

MISCELLANEOUS INFORMATION

NATIONAL ASSOCIATION OF JUSTICES' CLERKS' ASSISTANTS

Lord Denning's Address

The following extracts from the address of the Right Hon. Lord Denning, P.C., M.A., to the 19th Annual General Meeting of the National Association of Justices' Clerks' Assistants, have now been received. Lord Denning said: I notice that your motto is "We work for Justice." I should like to pay a tribute to your association in that great task. Whether Judges, magistrates, clerks or assistants, we all have the same goal. We work for justice.

Justice is Clear-sighted

In your emblem you have the sword of justice. I am glad that you haven't got justice blindfold, because to paint justice blind is to misrepresent her altogether. Justice should be clear-sighted so as to be able to see which way lies the truth, and which way lies justice. But, indeed, whilst we all work for justice—and the Judges may claim that they *do* justice—in truth, they only work for it the same as all of us. Just as the captain of a ship is no good without engineers, or the aircraft without the ground staff, so indeed, Judges and magistrates cannot do their work unless the machinery works smoothly and efficiently.

What is Justice?

We talk of justice, we ask for justice—but what does it mean? Archbishop Temple, when he went to the Inns of Court once to speak to the lawyers started off by saying: "I cannot say that I know much about the law, having been far more interested in justice." There was a piece of gentle irony; a delicate rebuke to the lawyers at that time.

The Wrong Approach

When I was brought up in the law, lawyers thought that law was a thing which was laid down as a command by a sovereign to people who were to obey. It was to be enforced by punishment and sanctions. No one was to inquire into the moral strength of it, into whether it was right or wrong. It was simply a series of commands which had to be obeyed. That is quite the wrong approach.

The English Reputation

In this country we have a reputation for law and order which is higher than that of any other country in the world. Law and order is better maintained here than anywhere else. And why is it? The ordinary Englishman does not obey the law because he is afraid of punishment, or because he is afraid of sanctions. Of course there are some wicked people, we all know them, for whom we have punishment, but the average Englishman obeys the law simply because he knows it is a thing he ought to do. Suppose you have a case of a gangster who goes into the bank and holds the staff up at the point of a pistol. There is a policeman there, maybe in plain clothes, maybe not. If he calls on the folk there to help him arrest the gangster, every Englishman there will help. There is more force in the hands of the gangster, but the ordinary man knows that he must help the police. He must help the forces of law and order because it is a thing he ought to do. That is the reason why the ordinary man obeys the law.

But if that is the reason, we must see to it that the law is just and is justly administered, because the average man will obey the law so long as he believes it to be righteous and just and justly administered. But he won't feel the same about it if it is unrighteous or unjust. So I ask again, "What is justice?" Well, that is a question which has been asked by many men far wiser than you or me, and no one, so far as I know, is able to find a satisfactory answer.

Justice is Spiritual

Justice is not a thing you can see. It is not temporal, it is eternal. It is a thing of the spirit. And the best definition of justice is simply this: It is what the right minded members of the community—people with the right spirit within them—believe to be fair.

That is what all of us who work in the law should aim at. We should see to it that as far as in us lies, we represent the right-minded people seeking to do as best we can what is fair not only between man and man, but in these days, between man and the local authorities and between man and the State.

Justice in Practice

Our English law has been built up, not so much on high sounding principles, but on day to day practical application; on the procedure of the courts from the highest to the lowest. For instance whenever one of Her Majesty's Judges takes his seat, there is one application which by long tradition is always heard first. Counsel has only to go before the Judge and say "My Lord, I have an application which concerns the liberty of the subject" and straight away, whatever the application may be—it may be an application for bail which the magistrates have refused and the man may want to go to the High Court, or it may be a *habeas corpus*—if it is an application which concerns the liberty of the subject, that application is heard first. All other matters are put on one side, no matter how important they may be.

Liberty of the Subject

The liberty of a subject has precedence over everything else. This has applied throughout the centuries. Of course we have had to fight for it. In the days of King Charles I, when five knights refused to pay money for the defence of the realm because it had not been sanctioned by Parliament, the King threw them into prison and the Judges, to their disgrace, held that anyone imprisoned by a command of the King could be kept there. The King's command was sufficient. But now the law is that no one can be detained except so far as the law permits.

The Freedom of England

When in 1770, Lord Mansfield was Lord Chief Justice, the case came before him where there was a West Indian, a Jamaican, who was a slave. In those days, slaves were the subject or property, like furniture or chattels, and this Jamaican was brought over from the West Indies by his owner to England. This owner wanted to take him back with him, and there was the slave in a ship in the Thames. He wanted to be set free. He was manacled in irons in the ship and he brought his applica-

tion before the Chief Justice, Lord Mansfield, asking to be set free and Lord Mansfield in a celebrated judgment said "The air of England is too pure for any slave to breathe, let the black go free." And he was set free.

Only a year or two ago, history repeated itself in a ship in the Thames. It was a Pole who sought political asylum here and the master of the ship kept him detained in the Thames, and he too, seeking political asylum here, was set free. So you will see that the fundamental principle has run through our law, through the practical application of it, which preserves the liberty of the subject. Although we complain of bureaucracy and State interference, I am glad to say that the freedom of the individual is as yet not in any way impaired—and I hope it never will be.

On Magistrates

But, the merit of our law does not depend solely on the practice and procedure; one of the cardinal features of it is the part taken by laymen. In the great majority of our magistrates' courts the magistrates are still laymen, unlearned in the law, unpaid, but still, I venture to suggest, doing their job excellently well, when they are properly advised on law by their assistants—as I know they well are by you. There is nothing in all the world like our unpaid magistrates. If you go to other countries, and I have been to many, you will find them always with their paid lawyers presiding in the courts up and down the country. Here, except for a few metropolitan magistrates, the daily administration of justice is all done by laymen.

On Unanimity

Nearly 600 years ago, in 1367, when the Judges of Assize went to Northampton, they had a case in which the jury were divided. One man stood out against 11. He said he would die in prison rather than give a verdict against his conscience. Thereupon the Judge took the verdict of the majority. The verdict of the 11 was brought before the King's Judges in London. It would be about the time when the justices were first appointed—and all the Judges said that the verdict of the 11 was no verdict. No man could be compelled to give a verdict against his conscience. And it was set aside.

When Magistrates are Divided

But of course your magistrates need not be unanimous. That is rather a different matter. There is an appeal, as you know, against the magistrates, whereas in practice there is no way of appeal against the jury on questions of fact, except in extreme cases.

When you have a system of appeal such as you have with magistrates, then the verdict of a majority can well be taken. However, I would suggest to you, if you are asked for advice by your magistrates on the subject, that it is not wise, as a rule, for them to announce that the verdict is by a majority. I would say this: that if there is a case which is very difficult, may be a point of law being involved, where the magistrates could welcome the decision of a superior court, then it may well be right for them to announce by a majority, because the Appeals Court likes to know it. Particularly this may be so in matrimonial cases which often involve points of law.

The Freedom of the Press

Since the case against the unknown writer Junias in the days of Lord Mansfield in 1770, no one has to this day prosecuted a newspaper for criticizing the Government of the day. And surely, that again is one of our instances of freedom.

The newspaper reporters are present in court to represent the public. They are there to see that everything is rightly and well done. They are indeed, in this respect the watchdogs of justice. But the free Press has its responsibilities. This freedom is not to be abused. In some countries it is abused, so much so that in every sensational trial, the Press see all the witnesses before-hand and get them to give statements at first hand, second hand and fourth hand and publish it all before the trial—so much so that the mental atmosphere of the community is such that a fair trial is almost impossible.

Indeed, when I was in Chicago 18 months ago I saw for myself. We arrived at the Union Station as we were told that there was a murderer wanted there. He was alleged to have killed a policeman.

Later I spoke to an American Judge who said "He won't be taken alive." The next day there was this great headline in the press "Slayer of cop captured" which being interpreted means that the murderer of a policeman has been arrested. There were photographs of the man who had been beaten up. There were full statements of his so-called confession. There were lists of

his previous convictions. All before his trial. That could not be contemplated here with our procedure and our attitude towards contempt of court.

Freedom of the press is all very well, but it must not be abused and our procedure for contempt of court has made our newspapers in this respect the best in the world. I would suggest to you that as long as we keep our fundamental principles of justice being done in open court and trust to the press not to abuse their freedom, then all will be well.

Proceedings in Camera

Another question you may have to consider is the question of how far proceedings should be held in camera. Magistrates can order certain proceedings to be heard in private without the press being there. Let me say at once that it is a fundamental principle of our law that all proceedings in a court of justice should be held in public unless there is some overwhelming reason for it to be held in private—and for this reason when a trial is held in public everyone can see that justice is done and that a fair trial is held.

"Bias or Interest"

The magistrate must have no interest in a case in any way. This is vital. You must see that a magistrate does not sit if he is in any way interested. That may quite often happen in cases which come before the court where the local authority is concerned. If a magistrate is a member of the local authority, he must not sit.

A case was once put to me where the magistrate knew his wife was going to give evidence. Ought he to sit on the bench? I should have thought the answer was plain. He ought not to sit. Magistrates must have no interest in the cause.

On the Clerk Retiring with the Bench

Then there is the question whether the justices' clerk should retire with the magistrates. It is said that if the magistrates' clerk always retires with them, it may be thought that he influences the decision of the magistrates. I do not think myself that there is any fear of that or that the ordinary people in this country think that there is any fear of that. The clerk is their adviser. If there should be a clerk who goes too far, then they can put him in his place. But I do not think up and down the country there is any fear of that. All through these hundreds of years the clerks have done their duty simply in advising the magistrates on the law. It is often essential, especially in matrimonial cases, that the magistrates' clerk should be able to take his notes in so that the magistrates can consider them and he can read them.

Magistrates should take their clerks for their advice whenever a point of law arises.

The Part of the Assistant

Everyone in the law knows that the successful working of the machine depends on those assistants who help us daily with our work. They are just as vital for the system as the Judges and magistrates themselves. We all work for justice. The National Association of Justices' Clerks' Assistants does well in seeking as it does to inspire among you the right approach. I know that help is given by you to everyone who goes to your court. The complainant always receives help in his summonses. He gets help in formulating his complaints and help in all points of procedure. He thereby learns to respect our courts and also builds up that respect for law and order which is the envy of the world. Long may you help in your great work for justice.

WEST RIDING OF YORKSHIRE FINANCES

The administrative county of the West Riding of Yorkshire is one of the greatest English counties. It has a population of over one and a half millions for whom local government services are provided by 90 local authorities of which the largest county district in population is the rural district of Doncaster (56,700), closely followed by the non-county borough of Keighley (55,500). The lowest populated authority is Tickhill urban district with a figure of 2,600.

The county precept for the current year is 10s. 4d., a reduction of 5d. as compared with 1956-57. It appears from analysis of the figures given by Mr. J. R. McDonald, West Riding treasurer, that this reduction was possible because of increased receipts of exchequer equalization grant.

The booklet summarizing the accounts for 1956-57 which Mr. McDonald and his staff have promptly completed and published shows that total county expenditure increased in that year by

£3½ million to a total of £32 million, *i.e.*, an increase of 12 per cent. Of this total the education service accounted for £19 million and for nearly three-quarters of the total increase.

Nineteen per cent. of all expenditure fell upon the rates as compared with 22 per cent. in 1955-56. In terms of population the total revenue expenditure increased by £2 1s. 10d. per head to £19 16s. 1d., but the rate-borne proportion fell by 3s. 6d. to £3 15s. 6d.

At the year end revenue cash held amounted to £2½ million but capital cash was overdrawn by £1½ million. During the year revenue balances not immediately required were placed on deposit or temporarily invested and earned the handsome sum of £141,000 in interest.

The West Riding furnishes a good example of the reasons which have caused the flight from gilt edged securities. Investments of this sort held by the county council which cost £4,200,000 to buy had by March 31 last lost £900,000 of their value. The average yield at the same date was £3 17s. per cent.

Mr. McDonald comments that capital expenditure at £3½ million was a record. Education accounted for over £2½ million, an increase of £400,000: other services showed a net decrease. Average rate of interest paid on the £12 million total debt outstanding was £4 4s., excluding the debt on certain pre-1926 small-holdings schemes.

The amount of tax paid by motorists continues to increase in the West Riding as elsewhere. Two and a half million pounds was collected in the year to November 30, 1956: the grants for highway maintenance and improvement received by the county council during 1956-57 totalled only £1.9 million. The new road programme announced by the Minister of Transport may alter the curious position revealed by the accounts that the net expenditure on highways and bridges was less in 1956-57 than in 1952-53.

ASSOCIATION OF CHILDREN'S OFFICERS

The eighth annual conference of this Association will be held at Buxton from September 25 to 27. Addresses will be given by Dr. D. H. Stott on "Suggestions for a preventive approach to child care problems"; by Sir John Wolfenden, C.B.E., on "On being young"; by Mr. J. D. Longland, M.A., on "Helping children to grow up active and adventurous"; by Mr. W. O. Bell, M.A., on "Changing objectives in education"; by Mr. Donald Ford, M.A., J.P., on "The developing role of child care." There will also be a symposium on "Families in need of help," in which Miss M. M. Miller, Miss M. D. Simpson, and Mr. J. W. Freeman will take part. In addition some social gatherings have been arranged.

HER MAJESTY'S VISIT TO BRENTWOOD

Her Majesty The Queen and Prince Philip, Duke of Edinburgh, have graciously consented to visit Brentwood on October 30 next.

This year is the 400th anniversary of the foundation of the public school in this town and the purpose of the visit of Her Majesty and Prince Philip is to visit the school on that occasion and to visit the new civic offices of the urban district council which will be completed within the next few weeks.

The new offices are being constructed at a cost of about £120,000 and provision has been made in the lay-out for the addition, at a later date, of a new public hall.

Her Majesty is likely to visit the offices soon after noon on October 30 and may address the council in session in their new council chamber.

WHITEHAVEN CIVIC CEREMONIAL

After over 60 years' incorporation as a borough, Whitehaven, West Cumberland, now has gold badges to be worn by its ex-mayors still on the town council for ceremonial occasions.

The badges, 15 in number, were a gift from local industry, Marchon Products Ltd. and Solway Chemicals Ltd., and were handed over recently. They show enamel replicas of the borough coat-of-arms, granted to the original Whitehaven Town and Harbour Trust in 1860, and are suspended from scarlet moire necklets.

The mayor, Councillor T. Reed, himself a Marchon employee, formally received them from the chairman of the firm, Mr. Frank Schon, at a ceremony in the staff canteen.

Whitehaven became a township in 1708 when Parliament created the town of Whitehaven and Harbour Trust, which was granted its present coat-of-arms in 1860, when the motto "Onward" was also adopted, and the town became a borough in 1894.

Such a sensible way to save

The prudent saver, whether he is thinking in terms of single pound notes or in hundreds, asks himself two leading questions before he decides how to invest the money he has put by. First: is my money going to be safe? Secondly: is it going to earn me a good rate of interest?

The answer to both these questions is emphatically 'yes', in the case of investment in the Abbey National Building Society. Consider the facts: The Society has assets of £258,000,000, which signifies security to satisfy the most discriminating investor. The current rate of interest on shares is 3½ per cent. per annum with income tax paid by the society. This represents £6.19 per cent. when income tax is paid at the standard rate.

There are further advantages of investing in Abbey National. Any sum from £1 to £5,000 is accepted, and withdrawals can be arranged at convenient notice, with interest paid right up to the date of withdrawal.

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CVS-455

PRIDE OF PLACE

One of the main functions of the law is that of putting people in their place. That phrase may be understood both in its colloquial and its literal sense. Under the law and practice of the Constitution, the duties and privileges of Lords and Commons are neatly laid down; the business of the Executive is classified and allocated to Secretaries of State, Ministers and Civil Servants respectively; the jurisdiction of the Judges and their various courts is ordered and assigned. Criminal law and tort provide remedies against those who get (as we say) above themselves; trespass, in a sense, is putting yourself in somebody else's place; larceny and conversion are letting your hand stray to the wrong place; defamation is dropping a word out of place. Even matrimonial offences fit into the scheme: desertion consists in wilfully absenting yourself from your prescribed place, while adultery amounts to being found in an improper place. Offences in relation to road traffic, and to the civil claims arising therefrom, usually arise from the presence of two or more vehicles, at the same time, in the same place.

The principal characteristic of Victorian days was that everybody knew his place; as Charles Dickens satirically expressed it in *The Chimes*:

O let us love our occupations,
Bless the squire and his relations,
Live upon our daily rations
And always know our proper stations.

That characteristic explains both the discipline and the dullness of Victorian domestic life, the subordination and the poverty of the worker, the strict and unquestioned hierarchy among the social classes, the acquiescent subservience of women, the unbridged gulf between ignorance and education. These contrasts lie behind much of the smug complacency of the nineteenth century—the "God's in his heaven, all's right with the world" philosophy that we nowadays find so tiresome. The turbulence of the twentieth century reflects the refusal of almost everybody to keep his place in the social scheme; a present-day Browning might well re-write the idyllic lines from *Pippa Passes* in something like the following form:

The year's at the spring,
And day's at the morn;
The fly's in the ointment,
The rot's in the corn.
The bee's in the bonnet,
The cow's in the mire;
The bat's in the belfry,
The fat's in the fire.

And he might continue with such references to the obtrusive snake in the grass, bull in the china-shop and cat among the pigeons, as memory might recall and prosody permit.

The apostles of egalitarianism, strangely enough, are apt to give the most vociferous welcome to this modern trend. Once in a way they may be justified, when greater equality of opportunity gives genius its head and produces, from lowly origins, a Napoleon of military strategy, politics, finance, literature or art. The trouble is that, for every one such genius, there are at least a thousand puffed-up nonentities, who make a great nuisance of themselves for a short time before they hit some solid obstruction and ignominiously burst. Impudence and self-assertion induce semi-literates to try and cut a dash in the journalistic world, the man with the gift of the gab to pose as a politician, the fifth-rate "wise-cracker" to seek a reputation as an entertainer on the air.

So low is the general standard of education that they may succeed (as Abraham Lincoln once observed) in fooling some of the people all the time and all of the people some of the time; but one day they will be found out and relegated to their proper place.

Two recent animal stories, from the daily press, provide an allegorical epilogue. In Newcastle-on-Tyne seven bullocks, escaping from a slaughterhouse, intruded into some strange places. Four of them entered the open front door of a house and climbed the stairs. While three politely waited at the head of the staircase, the fourth pushed its way into the sitting-room, terrorizing the occupants, until their spaniel speeded the departure of these unwelcome guests. The other bullocks divided their attentions between the Central Station goods-yard and the local cemetery, where a funeral service was indecorously interrupted. All were eventually captured and replaced where they belonged.

In Braintree, Essex, a four-foot alligator escaped from a private reptile collection and, after being missing for two days, was run to earth (of all unlikely places) in a cornfield. The finder, a 75 year old gardener, came upon it, lashing its tail and snapping, thrust a stick between its jaws, and seized it round the middle with his hands. After that resistance crumpled, and it came quietly.

These two supreme pieces of incongruity leave the bull looking quite at home in the china-shop, and the snake in its natural element in the grass. Their activities and their ultimate fate are typical of the abortive restlessness, the queue-jumping and the place-seeking, of pushful mediocrity today.

A.L.P.

ADDITIONS TO COMMISSIONS

ESSEX COUNTY

Mrs. Winifred Rita Allison, The School House, Brentwood.
Mrs. Primrose Jennie Baldwin, 83 Fronks Road, Dovercourt.
Lawrence William Carroll, 52 Southview Drive, Upminster.
Christopher Daniels, The Pond House, Emerson Park, Hornchurch.

John William Deal, The Crossings, Feering Hill, Kelvedon.
Harry Gochin, 1 Golden Lion Lane, Harwich.
Dr. Percy George Cecil Jones, 1 Southend Road, Hockley.
Mrs. Madge Doreen Leftley, The Old Rectory, Marks Hall, Coggeshall.

Edward Alfred Marchant, Oreanda, Vowles Road, Langdon Hills.

Derek William Rea Spurging, 29 Clay Hill Road, Basildon.
Wilfred James Walter Taylor, 42 Castellan Avenue, Gidea Park, Romford.

Albert Waters, Linden Lea, Little Oakley.

PEMBROKE COUNTY

Lt.-Col. Christopher Francis Fothergill, The Old Rectory, The Norton, Tenby.

Ivor Howells, Pleasant Green, Stepaside, Narberth.

Mrs. Maggie May Howells, Glenwood, Narberth Road, Tenby.
William Christopher Jones, 5 High Street, Tenby.

WILTS COUNTY

The Hon. Major Henry Richard Allsopp, Vern Leaze, Calne.
Charles Eric Long Bruges, Brooklyn, Semington, Trowbridge.
Mrs. Dorothy Forsyth Gawthorpe, Lantern Cottage, Elcombe, Swindon.

Thomas William York King, Lower Baynton, Edington, Westbury.

Mrs. Frances Elizabeth Newall, Chute Collis, Chute, Andover.
Roger George Wiltshire, Alexandria House, Cherhill, Calne.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Bastardy—Mother in Australia—Enforcement of order payable direct.

In 1946 a bastardy order was made in favour of Miss A against Mr. B in respect of one child. The court ordered that the payments should be made direct to Miss A.

In 1951 Miss A married Mr. C and they went with the child to reside in Australia and for some time thereafter Mr. B. made payments to me on behalf of Mrs. C, and these payments were periodically forwarded to her. Mr. B has now stopped his payments and Mrs. C wishes the order to be enforced. The Maintenance Orders (Facilities for Enforcement) Act, 1920, does not apply to affiliation orders so that Mrs. C cannot make use of the facilities under that Act.

As I am not the collecting officer for the purpose of this particular bastardy order, I cannot take action to enforce payment.

I should like to give Mrs. C any advice I am able as to any method which may be available to her to enforce the order, and for that reason, I shall be obliged for your advice:

1. Is any procedure available for Mrs. C to obtain in my court a variation of the existing order with a view to future payments being made to me as clerk of the court?

2. If any such procedure is available, could it be applied to arrears as well as future payments? If so, what proof ought the court to require as to the arrears being owing?

HYDA.

Answer.

1. We do not see how the order can be varied to be made payable through the court, as the complainant would not be present. We think, however, that a summons for the arrears can be issued since, by r. 4 (2) of the Magistrates' Courts Rules, 1952, the complainant can authorize someone to make the complaint. In this case, she could authorize the clerk to the justices. The complaint would be heard in accordance with s. 74 of the Magistrates' Courts Act, 1952, and by subs. (5) of that section, it may be heard in the complainant's absence. The court should be satisfied that the child is still alive. In default of direct evidence, they would have to rely on some document from the mother to this effect. The same document could also embody a statement of the amount of the arrears up to that date.

2. See (1).

2.—Criminal Law—Young girl persuaded to commit indecent act by man—What offence has man committed?

A man is sitting on a bench in a public place with a raincoat thrown over his lap. He persuades a young girl, without assaulting her in any way, to put her hand under the raincoat and handle his person. There is no possibility of the girl seeing his person. Granted that the girl is an unwilling party, what offence is committed by the man?

I would suggest for your consideration the offence of indecent exposure, on the theory that exposure to the touch, as well as exposure to the sight, will constitute the offence. It would assist if you could quote any decided case on the point.

HINCA.

Answer.

Our correspondent says that the girl is an unwilling party. That might be enough to take the case outside the decisions in *Fairclough v. Whipp* [1951] 2 All E.R. 834; 115 J.P. 612, and *Director of Public Prosecutions v. Rogers* [1953] 2 All E.R. 644; 117 J.P. 424, where it was held that to constitute an indecent assault there must have been a hostile act. We would not go so far as to say that the girl's unwillingness does make the man in this case liable to be charged with committing an indecent assault. We cannot agree that the offence of indecent exposure has been committed, as we think that "exposure" can only mean exposure to the sight.

We would suggest, in default of any byelaw creating an offence of committing an act of indecency in general terms, that the man could be charged with the common law misdemeanour of outraging public decency.

3.—Highways—Highway drains—Discharge to stream or roadside ditch.

The law relating to the discharge of highway drains into natural streams seems obscure, and most of the references I have traced have dealt with the discharge of sewage or flood water. Kindly advise on the following points:

1. By what statutory right (if any) can a highway authority discharge surface water into a natural stream or watercourse?

2. For many years the highway authority have discharged surface water into a stream, the bank of which has tended to silt up so that slight flooding takes place downstream after heavy rainfall. A larger diameter main has now been laid which will discharge at a point higher upstream, and it is reasonable to suppose that more extensive flooding will occur downstream as a consequence. Are the council under any duty to clean out and strengthen the banks of the stream before discharging the new drain into it? Would it make any difference if the new outfall was at the same point as before?

3. For many years the highway has drained into a roadside ditch which is owned by X the adjoining landowner. The ground slopes away from the road so that the only water draining into the ditch is from the road. X has hitherto cleaned out the ditch from time to time but has now sold his land including the ditch to Y. Y questions (a) the right of the council to drain the highway into the ditch and (b) his duty to clean out the ditch which is of no use to him. What is the position?

P. X. JOHNIAN.

Answer.

1. In *Durrant v. Branksome U.D.C.* (1897) 61 J.P. 472, the Court of Appeal said that ordinary surface water from roads, though containing silt (and probably organic matter also) was not "sewage or filthy water," within the meaning of s. 17 of the Public Health Act, 1875. Section 30 of the Public Health Act, 1936, substitutes "foul water" for the words quoted. *Lumley*, p. 2296, is of opinion that the change does not alter the law, but *Dell v. Chesham U.D.C.* (1921) 85 J.P. 186 indicates that the water must at least be cleansed from adventitious impurities. Subject to this, we should describe the right as existing at common law, rather than by statute.

2. No, in our opinion. The discharge is lawful because the stream is capable of taking the discharge and it is only in times of exceptional rainfall that flooding occurs.

3. It is the duty of the adjoining owner or occupier at common law to cleanse his ditches so that they do not cause flooding and obstruction of the highway: see *A-G v. Waring* (1899) 63 J.P. 789. The highway authority under s. 67 of the Highway Act, 1835, also have power to cleanse such ditches but they are not compelled to do so.

4.—Licensing—Occasional licence—Liquor sold by licence holder owned by club—Whether offence committed?

I would like your views as to whether any offence, and if so, what, is committed in the following circumstances:

A registered club whose premises are too small for its annual ball hires a large hall for the purpose. The holder of a justices licence obtains an occasional licence to sell intoxicants at the ball.

In fact all the intoxicants are supplied by and are the property of the club, the holder of the justices' licence merely exercising nominal supervision.

I believe you have dealt with a similar question, but I have been unable to trace it.

NADAN.

Answer.

We answered similar questions at 120 J.P.N. 495, 796.

It is not important to consider primarily who was the owner of the intoxicating liquor before sale or on whose behalf it was sold (see *Mellor v. Lydiate* (1914) 79 J.P. 68). The essential question of fact is "Who sold the intoxicating liquor?"

In the case in point it seems that the "nominal supervision" exercised by the licence holder, to whom the occasional licence had been granted, was probably sufficient to establish that he sold the liquor and, therefore, no offence would be committed.

5.—Local Government Act, 1933—Qualification of councillor—Loss of qualification.

One of the members of my council, who was elected at the triennial election in 1955, has recently gone to live in a neighbouring area and has ceased to hold any of the qualifications under s. 57 of the Local Government Act, 1933. It seems that the member is now disqualified as a councillor and that it is a matter for the council to declare his office vacant, after which, as returning officer, I would take appropriate steps to fill the

vacancy within the statutory 30 days allowed under the Act.

CARBOR.

Answer.

Seeing that the councillor has lost all qualification, we agree.

6.—Magistrates—Jurisdiction and powers—Conviction of absent defendant—Adjournment for appearance before sentence—Non-appearance on adjournment—Issue of warrant—Ordering recognition to keep the peace in his absence.

A is summoned on charges of:

- (a) Damage under the Criminal Justice Act, 1914;
- (b) Common assault.

A, having been duly served, fails to appear and the magistrates try the case in his absence and convict A.

They adjourn the case for three weeks to consider their sentence and instruct me to notify A that the court requires A's attendance at the adjourned hearing.

At the adjourned hearing, if the defendant fails to attend, can the court:

- (a) Issue a warrant for A's arrest to bring him before the court?

(b) If so, must the prosecution apply at the adjourned hearing on oath or is the fact that evidence was given at the original hearing on oath sufficient to justify the issue of the warrant? (This is asked because the prosecution witness will not attend the adjourned hearing and this includes the private prosecutor in the assault case.)

(c) In lieu of issuing a warrant, can the court in sentencing A in his absence order A to enter into recognizances for good behaviour and to keep the peace on the assault charge or can such order only be made in his presence?

(d) If such order is made in A's absence must the order be served personally on A?

(e) How soon is A required to attend to enter into recognizances, i.e., how soon can the court order imprisonment for failure to enter into recognizances?

(f) Must any further notice be given to the defendant before imprisonment is imposed?

KOWLER.

Answer.

(a) Yes, provided that the requirements of the provisos to s. 15 (2) of the Magistrates' Courts Act, 1952, are satisfied.

(b) No sworn information is necessary. Evidence has been called by which the information has been substantiated on oath.

(c) The recognizance can be ordered in A's absence and the court should include in its order the term of imprisonment to be served in default of the recognizance being entered into and the time within which it is to be entered into.

(d) (e) (f) If a minute of order is served as required by r. 42 (2) and (3) of the Magistrates' Courts Rules, 1952, and A does not enter into the recognizance within the time fixed in the order no further notice is necessary before a commitment warrant is issued for non-compliance with the order.

7.—Nuisance—Criminal or civil remedy—Bird scaring apparatus at night.

The following problem has presented itself to me in this police district. A farmer, in order to keep birds away from seeds which have recently been planted, has placed in his fields an instrument which, at regular intervals, makes a report like a gun during the hours of darkness. This sound awakens a number of people living in the vicinity and naturally they complain, especially as a number have to rise very early for work or business. There are no byelaws in this district governing this matter, and I have been unable to find any statute referring to such instruments or noises at night. If you know of any relevant statutes, will you please inform me.

DAFFEY.

Answer.

This is an evident nuisance, in popular language, but not one for which a remedy exists in the magistrates' court. The remedy, if any, is in civil proceedings by the persons injured.

8.—Private Street Works Act, 1892—Tenders invited for two streets together—Effect on final apportionment.

My council are about to make up two adjoining private streets under the Act of 1892. Separate specifications, bills of quantities, estimates, and provisional apportionments have been prepared for each street, in accordance with s. 6 (2) of the Act. The council wish to advertise for tenders in such a way that the successful tenderer will make up both streets under one contract, although the cost of making up each street will be kept separately, in order to arrive at the correct figures for the final

apportionment. I cannot see any objection to this and shall be glad to receive your observations.

PACKOD.

Answer.

There is nothing in s. 266 of the Local Government Act, 1933, to prevent a local authority's obtaining a combined tender for two or more works to be executed together. For purposes of the council's standing orders under that section, which we assume provide for accepting the lowest tender, the work will naturally be considered as a whole. For purposes of the final apportionment in each street, we should expect the result to be advantageous, but the council will no doubt make sure that they would not have obtained a better tender by advertising separately, since (even if a frontager could not object on this ground under s. 12 of the Act of 1892) he might make it ground for a memorial under s. 268 of the Public Health Act, 1875.

9.—Real Property—Alleged interference with easement—Street parking place.

The council as owners of a private road granted to the Electricity Board on the vesting in the Board of the electricity undertaking a right of way in the following terms, to enable the Board to obtain access to the electricity works which had a frontage to the road:

"Full right and liberty for the Board and their servants and workmen and all others authorized by them in common with the council to pass and repass with or without vehicles of every description and at all times over and along the strip of land coloured brown on the plan (the road) . . . Together with full right and liberty to lay, use, maintain, inspect, repair, remove and renew electricity cables in and under the same."

The whole of the road is shown coloured on the plan attached to the deed referred to. The council now desire to permit car parking to take place along the side of the road opposite to that on which the electricity works have their frontage, still leaving sufficient space for vehicles to obtain access to the electricity works. The Electricity Board contend that the parking would interfere with their enjoyment of the easement, even though as a matter of fact, sufficient space were left for access purposes.

The council's contention is that not every interference with a right of way is actionable, and that as there will still be sufficient space left for vehicular access to the works no interference with the right granted will have been occasioned.

PAIDON.

Answer.

We agree with the council's contention; see *Sketchley v Berger* (1893) 69 L.T. 754. We assume that vehicles will still be able to pass one another and will be able to turn in the road: cf. the remarks of Jessel, M.R., in *Cannon v. Villiers* (1878) 42 J.P. 516. The Board will have the same right as other owners to appeal to the magistrates under s. 68 (3) of the Public Health Act, 1925, if (as we suppose) the council intend to proceed under that section.

10.—Town Police Clauses Act, 1847, s. 28—Urine thrown from first floor window.

A is the sub-tenant of a room on the first floor of a dwellinghouse and late at night he leans out of the window and throws a quantity of urine into the street, which falls on to two persons passing along the footway.

This conduct appears to come within the provisions of s. 28 of the Town Police Clauses Act, 1847. I specifically refer to the part of the section which says: "Throw from the roof or any part of any house or other building any slate, brick, wood, rubbish or other thing."

There is no mention of any liquid matter in the section, but it appears that urine can be classed as a "thing," as, in the dictionary definition of a "thing," a substance is included. Furthermore the encyclopaedia definition of urine includes the words "waste matter." The definition of rubbish also includes "waste matter."

I shall be obliged by your opinion as to whether you consider this incident comes within the provisions of s. 28 of the Town Police Clauses Act, 1847, and any other information which you may care to give.

HIBBEL.

Answer.

We do not think our correspondent need bother with dictionary definitions. The next clause in the part of the section he quotes is: "except snow thrown so as not to fall on any passenger." This implies that snow thrown on a passenger comes within the section, and snow must be an "other thing." We see no reason why urine should not also be an "other thing." The proviso, in our opinion, makes it clear that the *ejusdem generis* rule does not apply to "other thing."

